

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

PATRICK KIRKSEY

VS.

P&O PORTS TEXAS, INC.,
TONGHAI MARITIME,
COSCO BULK CARRIER CO., LTD. d/b/a
COSCO BULK, COSCO GROUP, and
COSCO AMERICA, INC.

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C.A. NO. G-05-057

Pursuant to Rule 9(h) of
the Federal Rules of Civil
Procedure – ADMIRALTY

FINAL JUDGMENT

This cause came on for a non-jury trial on July 13, 2006, Honorable Samuel B. Kent presiding. The Court carefully considered all trial testimony and exhibits. The Court has further carefully considered the Pre-Trial Order, together with all relevant attachments, all pleadings on file herein, all post-trial submissions, particularly including proposed findings of fact and conclusions of law from both sides, and the extensive trial briefs of both sides. The Court has carefully considered the transcript of proceedings filed post-trial, together with all of the deposition submissions of each party. The Court has carefully considered applicable statutory and case law, particularly that of the United States Court of Appeals for the Fifth Circuit. On the basis of its own careful observations during trial, the making of credibility assessments of all witnesses appearing live at trial, or by deposition, and the detailed consideration of all of the above materials, and in conformity with its Findings of Fact and Conclusions of Law this date entered, the Court now enters the following Final Judgment.

The Court **ORDERS** that Defendants Tonghai Maritime and Cosco Bulk Carriers Co. Ltd., as owner and operator of the M/V TONG HAI, are 45% liable and Pan Ocean Shipping Co. Ltd., as

charterer of the M/V TONG HAI, is 45% liable for failing to “exercise ordinary care under the circumstances” to turn over the ship and its equipment and appliances “in such condition that an expert and experienced stevedoring contractor, mindful of the dangers he should reasonably expect to encounter, arising from the hazards of the ship’s service or otherwise, will be able by the exercise of ordinary care” to carry on cargo operations “with reasonable safety to persons and property.” Liability of each and all Defendants is joint and several. Plaintiff is found 10% negligent, and his damages are reduced by that fault. Accordingly, Defendants Tonghai Maritime and Cosco Bulk Carriers Co. Ltd., as owner and operator of the M/V TONG HAI, and Pan Ocean Shipping Co. Ltd., as charterer of the M/V TONG HAI, are jointly and severally 90% liable to Plaintiff Patrick Kirksey for, and it is ORDERED that Plaintiff Patrick Kirksey do have and recover of and from each and all of the Defendants, the following damages which were proximately caused by Defendants’ negligence:

1. \$40,000.00 in past economic loss;
2. \$160,000.00 in future economic loss;
3. \$249,444.17 in past reasonable and necessary medical expenses;
4. \$914,890.90 in future reasonable and necessary medical expenses;
5. \$400,000.00 in past subjective losses, including loss of physical abilities, loss of the enjoyment of life, pain and suffering and mental anguish in the past and in the future, as well as significant and permanent disfigurement;
6. \$350,000.00 in future subjective losses, including loss of physical abilities, loss of the enjoyment of life, pain and suffering and mental anguish in the past and in the future, as well as significant and permanent disfigurement.

7. Less Plaintiff's 10% contributory negligence, or a total of \$1,902,901.56, out of which Plaintiff will be obligated to reimburse any compensation lien, if any, for medical and/or compensation benefits he has received to date.

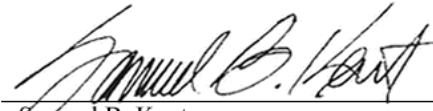
It is **ORDERED** that prejudgment interest from December 14, 2004 to the date of this Final Judgment accrue at the rate of 6% on all past damages itemized above;

It is further **ORDERED** that post judgment interest accrue at the rate of 6% on the entire judgment of \$1,902,901.56, from the date of this Final Judgment until collected.

IT IS SO ORDERED.

THIS IS A FINAL JUDGMENT. The Court FURTHER ORDERS that execution shall issue for this Judgment, if not timely paid.

DONE this 22nd day of May, 2007, at Galveston, Texas.



Samuel B. Kent
United States District Judge